IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos 2011 to 2017 of 2004
with
CIVIL APPLICATIONS Nos.9031 to 9033, 9035
to 9037 and 9039 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

TATA CHEMICALS LTD.

Versus

CHHOTALAL JAMNADAS SAMANI

Appearance:
1. LETTERS PATENT APPEAL No. 2011 to 2017 of 2004
MR KS NANAVATI Sr Advocate with MR KEYUR GANDHI for Appellants
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA
and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 04/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. This group of seven appeals are preferred from a common judgment of the learned Single Judge in seven petitions of the appellants wherein the concurrent finding in favour of the workmen upholding the grant of additional amount of gratuity ranging from Rs.8,000/- to Rs.14,000/- were challenged.

2. The facts are very simple and in a narrow compass. The respondent workmen have retired by a golden handshake under the voluntary retirement scheme of the company or upon reaching the age of superannuation during the period between September 1999 to December 1999. The appellant company entered into a settlement with the trade union of workmen on 13.11.2000 wherein, as regards the first demand to amend the wage scales, conditions were recorded in Clauses (A), (B), (C) and (D). Under the caption "TO AMEND THE WAGE SCALES" in the aforesaid settlement, it was agreed in the first Clause (A) that from 1.1.1999 a lump-sum amount per month was to be paid on pro-rata basis of attendance and such increase in wages was to be merged with the basic wage and new grades with effect from 1.4.2000. There is another clause agreeing upon grant of special amount shown under Clause (C) as "Stand Alone Lump-sum amount". Specifically below that Clause (C), it is mentioned as under:-

> "The lump-sum amount mentioned above will not attract any other benefits like P.F., Bonus, Gratuity, O.T. etc. However, if any deduction from this amount under any statute will become due, the same will be deducted from the payable arrears/recovered from the concerned workers, as the case may be."

There is no dispute about the fact that the lump-sum amount mentioned in Clause (A) and the Stand Alone Lump-sum amount in Clause (C) were to be paid on the basis of attendance. It is clarified under Clause (C) that the one-time stand alone lump-sum amount is to be paid to the workers who were on the permanent roll of the company as on 1.4.2000. Therefore, it can also not be denied that the wage revision has been effected with retrospective effect and the lump-sum amount under Clause (A) was expressly to be merged with the basic wage from

1.4.2000.

2. Upon application for additional amount of gratuity being filed before the Controlling Authority under the Payment of Gratuity Act, 1972 (for short "the Act"), the authority took the view that the additional amount agreed to be paid with retrospective effect by the aforesaid settlement was part of the wages and what was expressly excluded from the calculation of gratuity was "stand alone lump-sum amount" under Clause (C) under Demand No.1 in the settlement. It was also observed that the Act is a welfare legislation specifically covering the subject of payment of gratuity and any agreement or instrument or even statutory provision inconsistent with the provisions of the Act cannot have a binding effect. The applications of all the respondents were allowed on that basis. The appellants having preferred appeals therefrom, they were also dismissed by an elaborate judgment observing that the additional payments of lump-sum amount was expressly in respect of the services rendered and, therefore, such amounts were part of "wages" which, according to the definition contained in section 2 (s) of the Act, means all emoluments which are earned by an employee while on duty or on leave and which are paid or are payable to him.

3. Upon the orders as aforesaid being challenged before this Court, invoking Articles 226 and 227 of the Constitution, the learned Single Judge has, by the impugned judgment, confirmed the concurrent findings and orders under challenge and held that the authorities did not commit any error in making the orders. It was also observed that the amounts involved in each of the petitions and the total amount in the group of petitions did not warrant entertaining of the petition. It was in that context that the learned senior counsel Mr.Nanavati submitted that the ratio of the impugned judgment may open a pandora's box in view of hundreds of employees having retired or accepted voluntary retirement during the relevant period. That can hardly be a consideration for deciding or entertaining a petition or an appeal.

4. As seen earlier, this is the fourth round of litigation on the same subject-matter. We are in complete agreement with the view taken by the Controlling Authority as also the Appellate Authority while deciding the issue as to whether the lump-sum amount was a part of the wages as defined in the Act. Even after hearing the lucid arguments of the learned senior counsel Mr.Nanavati at length, it was clear that the exceptions and clarifications provided in the Settlement below Clause

(C) could logically be applied to the "stand alone lump-sum amount" and could not be applied to the lump-sum amount payable under Clause (A). It was also clear that the amount payable under Clause (A) as lump-sum amount was part of the wages and gratuity on the basis thereof could not have been denied by any agreement, instrument or enactment as the provisions of the Act have an overriding effect by virtue of the provisions of Section 14 of the Act.

5. In above view of the matter, the appeals are summarily dismissed. The civil applications do not survive and accordingly they are disposed of as rejected.

Sd/-

(A.M.Kapadia,J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)